

would be filing a formal motion and memorandum of law in support of its request to excuse in-person attendance of a representative from the insurance carrier. *Id.*

4. Undersigned counsel submitted a motion and supporting memorandum of law on August 14, 2023. [DE 156] Plaintiff did not submit a formal motion or brief in support of its request to excuse parties.

5. On August 17, 2023, the Court issued an Order setting the settlement conference for September 8, 2023, and scheduling a telephone conference to address the parties' requests for certain individuals to be excused from in-person attendance. [DE 159].

6. The telephone conference was held on August 21, 2023, during which the Court granted Plaintiff's request and denied Defendants' requests. Undersigned counsel notified the insurance carrier of the Court's denial of the request to excuse attendance by a representative of the insurance carrier that same day. The Court memorialized this ruling in an Order entered on August 22, 2023. [DE 162].

7. Defendants shared the Court's Order with the insurer's counsel on August 23, 2023. The Order specifically provides, "A representative of the carrier shall attend the entire settlement conference in person. Local Civ. R. 101.2(d)(1)(iii) (E.D.N.C.). The representative shall have full authority to settle and shall be a person other than the carrier's outside counsel." [DE 162]

8. Counsel for the insurance carrier responded that the insurance policy is an indemnity-only policy and that the insurer therefore has no authority to settle a claim and only the Defendants should be required to attend under the language of the Local Rule. The insurer's counsel also notified the undersigned that the insurer is based in London. Insurer's counsel asked if Defendants would be open to filing a motion for reconsideration.

9. Undersigned counsel filed a Motion for Reconsideration, explaining the insurer's stated position that the State reserves all the rights to determine how to settle the case, and thus, without authority to settle the claim, the insurer falls outside the scope of Local Civ. R. 101.2(d)(iii). [DE 168]

10. Plaintiff filed a response opposing the Motion for Reconsideration. [DE 170]

11. The Court denied Defendants' Motion for Reconsideration on September 6, 2023. [DE 171]

12. On September 7, 2023, undersigned counsel was contacted via email by attorney Joseph Aguirre of Wood Smith Henning & Berman LLP, stating he would be attending the settlement conference on behalf of the insurer.

13. Undersigned counsel called Mr. Aguirre immediately to confirm whether the insurance company would send a non-attorney representative to the settlement conference scheduled for the next day, in light of the Court Orders requiring in-person attendance. Mr. Aguirre reiterated that the insurer's position is that the policy does not require the insurer's approval of a settlement and thus they do not believe their participation is necessary. Undersigned counsel explained that, regardless of the insurer's position on the policy, the Court had ordered, twice, in-person attendance by a representative of the insurance company. Undersigned counsel followed up this phone call with an email to confirm her understanding of the insurer's intention not to appear.

14. Meanwhile, undersigned counsel has been working diligently with Defendants to obtain and secure settlement authority and prepare for the mediation.

15. Defendants are prepared to proceed on September 8, 2023, as ordered by the Court but wanted to inform the Court of this development as soon as possible.

Respectfully submitted, this 7th day of September, 2023.

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CERTIFICATE OF SERVICE

I hereby certify that, on this date, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will provide an electronic copy to:

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This the 7th day of September, 2023.

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